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In re Application of  
Kallmeyer et al.  
Application No.: 09/308223  
Filing or 371(c) Date: 08/12/1999  
Attorney Docket Number: 2924-0139

DECISION ON  
PETITION

This is a decision in response to the Request for Withdrawal of Abandonment and Contingent Petition for Revival Under 37 CFR 1.137(b), filed July 28, 2008. The Request for Withdrawal of Abandonment is properly treated as a petition under 37 CFR 1.181 (no fee). The delay in treating the petitions is regretted.

This Petition under 37 CFR 1.181 is hereby dismissed.

The petition under 37 CFR 1.137(b) is hereby granted.

Background

The above-identified application became abandoned for failure to timely and properly reply to the final Office action, mailed November 11, 2005. The final Office action noted that no claims were allowed. Applicant filed a Notice of Appeal and Brief in Support of Appeal, and the Board issued a Decision affirming the Examiner on May 30, 2008. Since no claims were allowed, proceedings in the application were terminated on the date the appeal is dismissed. See, 37 CFR 1.197.

The present petition under 37 CFR 1.181

Applicant files the present petition and requests withdrawal of the holding of abandonment noting that the two (2) month deadline for requesting rehearing was July 30, 2008. Alternatively, Applicants petition for revival of the application under 37 CFR 1.137(b).

Applicable Law, Rules and MPEP

37 CFR 1.197(2) states:

(2) The date of termination of proceedings on an application is the date on which the appeal is dismissed or the date on which the time for appeal to the U.S. Court of Appeals for the Federal Circuit or review by civil action (§ 1.304) expires in the absence of further appeal or review. If an appeal to the U.S. Court of Appeals for the Federal Circuit or a civil action has been filed, proceedings on an application are considered terminated when the appeal or civil action is terminated. A civil action is terminated when the time to appeal the judgment expires. An appeal to the U.S. Court of Appeals for the Federal Circuit, whether from a decision of the Board or a judgment in a civil action, is terminated when the mandate is issued by the Court.

Analysis/conclusion

In this instance, Applicant did not file an appeal or seek review by civil action. The proceedings in the application therefore terminated on the date the appeal was dismissed, May 30, 2008.

The petition is dismissed.

Petition under 37 CFR 1.137(b)

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b); (2) the petition fee; and (3) a proper statement of unintentional delay.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuation application No. 12/180,794, filed July 28, 2008.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

This application is being referred to the files repository.

/Derek L. Woods/  
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Office of Petitions